

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL NO. 1456  
LITIGATION ) Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO: )  
International Union of Operating )  
Engineers, Local No. 68 Welfare )  
Fund v. AstraZeneca PLC et al. )  
Civil Action No. 04-11503-PBS )

AFFIDAVIT OF JACK E. FERNANDEZ

STATE OF FLORIDA )  
                       ) ss.:  
COUNTY OF HILLSBOROUGH )

JACK E. FERNANDEZ, Esq., being duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of Florida.
2. From June 2003 to the present, I represented Dr. Stanley C. Hopkins in the above-captioned action (the "New Jersey Action").
3. On July 1, 2003, prior to any oral agreement by me to accept service of the Complaint in this matter, counsel for plaintiff sent me a proposed Memorandum of Understanding ("MOU") setting forth proposed terms for the settlement of this matter with my client, Dr. Hopkins. The cover letter from plaintiff's counsel to me (attached hereto as Exhibit A) references a

discussion between the two of us on the previous day (June 30, 2003) in which plaintiff's counsel had indicated that "time [was] of the essence" with respect to settling the matter. The substance of this discussion was that my client's opportunity to settle the case quickly and without burdensome attorney's fees might be lost if the case were to be subsumed into a federal action pending in Boston. He predicted that AstraZeneca would ask Dr. Hopkins to stipulate to removal and that, if the case were removed, another set of plaintiff's attorneys would then be in charge of the claims against Dr. Hopkins and the terms and timing of any settlement.

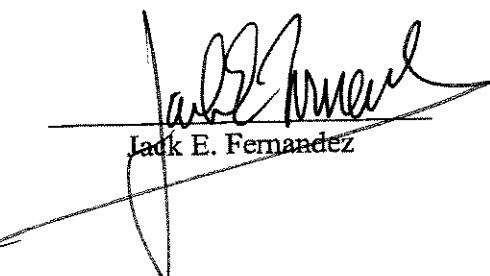
4. The only monetary consideration set forth in the MOU proposed by plaintiff's counsel was restitution with respect to free samples of Zoladex which Dr. Hopkins billed to Medicare. Because, as I later informed plaintiff's counsel, I understood that Dr. Hopkins had already made full restitution to the government, settlement on these terms would not have required any monetary payment from Dr. Hopkins. In an email to me dated July 4, 2003, counsel for plaintiff acknowledged that, if my understanding of the restitution already made by Dr. Hopkins was correct, a monetary payment would not be part of the proposed settlement. In that same email (attached hereto as Exhibit B), counsel for plaintiff reiterated what he had told me orally regarding any proposed settlement – namely, "if this case goes to federal court, all bets are off as any control we now have over the litigation will be lost." Plaintiff's counsel indicated that he was inclined to agree that no monetary compensation would be necessary to settle the action if the case remained in state court under his control.
5. Some time on July 3, 2003, I had a telephone conversation with Eric D. Gill, an associate at the law firm of Davis Polk & Wardwell and counsel

for AstraZeneca Pharmaceuticals LP in the New Jersey Action. I do not recall what time of day this telephone call took place. Mr. Gill asked whether my client had been properly served. My notes of my conversation with Mr. Gill (attached hereto as Exhibit C) confirm that Mr. Gill did ask me whether Dr. Hopkins had properly been served. I do not presently recall whether I had already informed plaintiff's counsel that I would accept service or whether I was awaiting authorization from my client to do so. As a result, although I know that I gave Mr. Gill an accurate description of the status of service at the time of his call, I do not recall what I said to Mr. Gill.

6. I agreed to accept service of the complaint in this matter on July 3, 2003. I do not recall the time of day on July 3 at which I agreed to accept service. My agreement to accept service was conveyed orally. To the best of my knowledge, I did not memorialize my agreement to accept service in writing or file any document with Court reflecting my agreement on or before July 3, 2003. On July 18, 2003, I executed an affidavit (attached hereto as Exhibit D) indicating that I had agreed to accept service of the Complaint on July 3, 2003. That affidavit did not address whether or not Dr. Hopkins would or would not consent to removal. I did not file any document with Court or appear in any fashion in this case until July 18, 2003. I did not convey either orally or in writing to counsel for AstraZeneca my client's lack of consent to removal on July 3 or prior.
7. On or about July 15, 2003, counsel for AstraZeneca served subpoenas on Dr. Hopkins and me for testimony and documents. I have a vague recollection that I requested that counsel for plaintiff draft motions papers for Dr. Hopkins and me seeking to quash those subpoenas, and that he

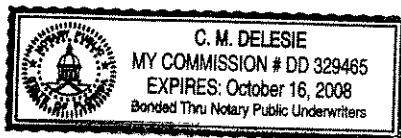
agreed. Attached hereto as Exhibit E is an email dated July 16, 2003 from plaintiff's counsel to me attaching the draft motion to quash prepared for me and my client by counsel for plaintiff.

8. After discussions with plaintiff's counsel, on or about August 4, 2003, I filed a joinder in plaintiff's motion to remand, in which I indicated that Dr. Hopkins did not consent to removal. This joinder followed the form of a similar pleading previously filed on behalf of one of the other doctor defendants, Dr. Antoun. Plaintiff's counsel had provided me with a copy of Dr. Antoun's pleading and asked if I would be willing to file it on behalf of D. Hopkins, as is reflected in an email from plaintiff's counsel to me dated July 17, 2003 (attached hereto as Exhibit F).
9. In response to the subpoena served on me by counsel for AstraZeneca recently on September 16, 2005, I moved for a protective order, which was ultimately denied by Judge Bowler. Counsel for plaintiff provided me with the citations of cases that could be used in support of my motion. Attached hereto as Exhibit G is an email from plaintiff's counsel to me dated November 2, 2005 in which plaintiff's counsel provided me with case citations to be used in support of my motion.
10. After Judge Bowler's order denying my motion for protective was issued on January 6, 2006, I discussed with plaintiff's counsel whether or not to appeal Judge Bowler's ruling. Counsel for plaintiff suggested I might do so.



Jack E. Fernandez

Sworn to before me this  
6th day of February, 2005.



C.M. Delesie

Notary Public

**EXHIBIT A**

JUL. 1. 2003 10:39AM KLINE-SPECTER-P. C.

NO. 273 P. 2

**KLINE & SPECTER**  
A PROFESSIONAL CORPORATION

PHILADELPHIA OFFICE  
1628 LOCUST STREET  
THE NINETEENTH FLOOR  
PHILADELPHIA, PENNSYLVANIA 19102  
215-735-1030 TELEPHONE  
215-735-0857 FACSIMILE

NEW JERSEY OFFICE:  
KLINE & SPECTER  
1800 CHAPEL AVENUE, BUTTERFIELD  
CHERRY HILL, NEW JERSEY 08003  
609-652-1184 TELEPHONE  
609-652-1184 FACSIMILE  
CO-MANAGING ATTORNEYS:  
ROBERT ROSEN AND DONALD E. HAVILAND, JR.

Direct Fax: 215-735-0857

[Donald.Haviland@klinespecter.com](mailto:Donald.Haviland@klinespecter.com)

July 1, 2003

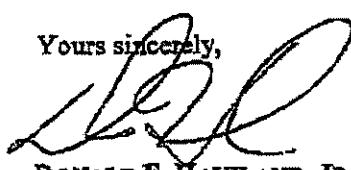
VIA FACSIMILE

Jack Fernandez, Esquire  
ZUCKERMAN, SPAEDER LLP  
101 E. Kennedy Blvd.  
Suite 1200  
Tampa, FL 33602

Re: NJ AWP Litigation

Dear Jack:

Per our telephone conversation yesterday, enclosed please find a draft Memorandum of Understanding we propose to enter into with your client. As we discussed, time is of the essence, so I would appreciate you getting back to me as soon as possible to let me know whether it is likely we can enter into some form of Memorandum of Understanding. I appreciate your timely consideration of this matter.

Yours sincerely,  
  
DONALD E. HAVILAND, JR.

DEH:ds  
Enclosure

cc: Shanin Specter, Esquire

G:\DEB\AWP\GENERAL - (200700)\AWP - NJ (200701)\Letter\Version\ver 001 (hopkin agt).wdp

MTQ-000003

**EXHIBIT B**

-----Original Message-----  
From: Haviland, Donald E. [mailto:Donald.Haviland@KlineSpector.com]  
Sent: Friday, July 04, 2003 2:18 PM  
To: 'Fernandez, Jack'  
Cc: Benedetto, TerriAnne  
Subject: RE: Hopkins

Jack,  
Yesterday my wife gave birth to our first child and I have been out of pocket since. I want to continue to work with you on a potential resolution, however, so in my absence you should feel free to communicate with my associate TerriAnne Benedetto about the case, our proposal and any questions/concerns you or your client may have.

7/11/03

MTQ-000053

RE: Hopkins

Page 2 of 3

As I said, if this case goes to federal court, all bets are off as any control we now have over the litigation will be lost.

If your math is right, I would agree with your estimate of the damages. Let's continue to work toward settlement rather than trial.

Thx  
Don

-----Original Message-----  
From: Fernandez, Jack [mailto:jfernandez@zuckerman.com]  
Sent: Thursday, July 03, 2003 5:44 PM  
To: 'Haviland, Donald E.'  
Cc: Fernandez, Jack  
Subject: RE: Hopkins

Hello Don:

When I return on Thursday next week, I am going to look at the government's restitution calculations. My recollection is that the government recovered the entire 100%, not reduced for an 80% co-pay. If this is true, based upon what I understand you to have said, we may be able to settle out of this case for nothing, or close to it, and obtain a release in return for cooperation and trial testimony. Before I undertake the restitution analysis, as well as the analysis of what co-pays were actually collected, I want to ensure my understanding of what you said is correct.

Of course I understand this e-mail and our discussions are pursuant to settlement negotiations as to disputed claims. I understand this correspondence will not be admissible on any issue relevant to Dr. Hopkins' liability or resultant damages.

Hope you have a good vacation, and I look forward to hearing from you. If you need to reach me before Thursday, you may contact me on my cell: 413.785.1856.

-----Original Message-----  
From: Haviland, Donald E. [mailto:Donald.Haviland@KlineSpector.com]  
Sent: Monday, June 30, 2003 6:04 PM  
To: 'jfernandez@zuckerman.com'  
Cc: Ricciardi, Louis  
Subject: Hopkins

Jack,  
Here are a few of the documents about which we spoke. I look forward to speaking with you further about this matter.  
Don  
<<Complaint - NJ AWP - FINAL.wpd>> <<preliminary injunction memo of law - astra - VG.wpd>>

---

Donald E. Haviland, Jr., Esquire  
Kline & Spector, P.C.  
1525 Locust Street, 19th Floor  
Philadelphia, PA 19102-3712  
215\*772\*1000 telephone  
215\*735\*0957 facsimile

This message is intended only for the use of the individual or entity to

7/11/03

MTQ-000054

**EXHIBIT C**

WTF?

Action   
Completed

## TELEPHONE CONFERENCE RECORD

DATE 7/3/03 FILE NAME Hopkins NO. \_\_\_\_\_

NAME Eric Gill / Davis Polk RE \_\_\_\_\_  
212-450-4619

Aster Zanica - exploring settlement possibilities -  
Has our client properly been served

Part of MDL in Boston

Redact all  
below

**REDACTED**

215

MTQ-000389

**EXHIBIT D**

7/18/03

Jack Fernandez, Esquire  
**ZUCKERMAN, SPAEDER, LLP**  
101 E. Kennedy Blvd., Suite 1200  
Tampa, FL 33602  
813-221-1010 telephone  
813-223-7961 facsimile

COUNSEL FOR STANLEY C. HOPKINS, M.D.

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

International Union of Operating Engineers,  
Local No. 68 Welfare Fund,

Plaintiff,

v.  
AstraZeneca PLC; AstraZeneca Pharmaceuticals LP;  
AstraZeneca LP; Zeneca, Inc.; TAP Pharmaceutical Products,  
Inc.; Abbott Laboratories; Takeda Chemical Industries, Ltd.;  
Bayer AG; Bayer Corporation; Miles Laboratories, Inc.; Cutter  
Laboratories, Inc.; GlaxoSmithKline, P.L.C.; SmithKline  
Beecham Corporation; Glaxo Wellcome, Inc.; Pharmacia  
Corporation; Pharmacia & Upjohn, Inc.; Monsanto Company;  
G.D. Searle Company; Sanofi-Synthelab Inc.; Johnson &  
Johnson; Alza Corporation; Centocor, Inc.; Ortho Biotech, Inc.;  
Alpha Therapeutic Corporation; Hoffman La-Roche Inc.;  
Amgen, Inc.; Immunex Corporation; Aventis Pharmaceuticals,  
Inc.; Aventis Behring L.L.C.; Hoechst Marion Roussel, Inc.;  
Centeon, L.L.C.; Armour Pharmaceuticals; Baxter International  
Inc.; Baxter Healthcare Corporation; Immuno-U.S., Inc.;  
Boehringer Ingelheim Corporation; Ben Venue Laboratories,  
Inc.; Bedford Laboratories; Roxane Laboratories, Inc.; Bristol-  
Myers Squibb Company; Oncology Therapeutics Network  
Corporation; Apothecon, Inc.; Dey, Inc.; Fujisawa  
Pharmaceutical Co., Ltd.; Fujisawa Healthcare, Inc.; Fujisawa  
USA, Inc.; Novartis International AG; Novartis Pharmaceutical  
Corporation; Sandoz Pharmaceutical Corporation; Schering-  
Plough Corporation; Warrick Pharmaceuticals Corporation;  
Sicor, Inc.; Gensia Sicor Pharmaceuticals, Inc.; Wyeth; Wyeth  
Pharmaceuticals; Saad Antoun, M.D.; Stanley C. Hopkins,  
M.D.; Robert A. Berkman, M.D.; Does 1-50; ABC Corp. 1-50;  
and XYZ Partnerships; and Associations 1-50,  
Defendants.

C.A. NO. 03-3230 (SRC)

**AFFIDAVIT OF  
JACK FERNANDEZ,  
ESQUIRE**

AFFIDAVIT OF JACK FERNANDEZ, ESQUIRE

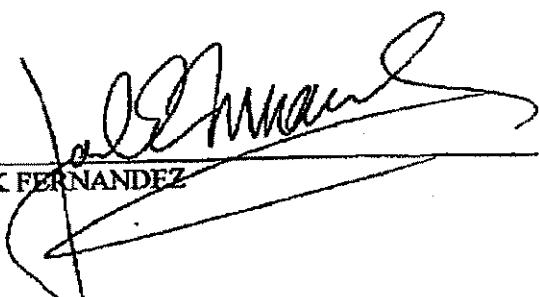
STATE OF FLORIDA :

ss.

COUNTY OF HILLSBOROUGH :

I, Jack Fernandez, Esquire hereby certify as follows:

1. I am a Partner with the law firm of Zuckerman, Spaeder, LLP, attorneys for defendant, Stanley C. Hopkins, M.D., in this case.
2. I accepted service of the Class Action Complaint on behalf of Dr. Hopkins on July 3, 2003.

  
\_\_\_\_\_  
JACK FERNANDEZ

SWORN TO AND SUBSCRIBED,  
BEFORE ME, THIS 18<sup>th</sup>  
DAY OF July, 2003.

Elaine H. Singletary  
Notary Public

Notary Public, State at Large, KY  
My commission expires Dec. 8, 2004

My commission expires \_\_\_\_\_

**EXHIBIT E**

Merritt, Clare M.

From: Fernandez, Jack  
Sent: Wednesday, July 16, 2003 5:45 PM  
To: Merritt, Clare M.  
Subject: FW: Motion To Quash



Please format

OK - Attached

Hold IN  
FILE

—Original Message—

From: Benedetto, TerriAnne [mailto:[TerriAnne.Benedetto@KlineSpecter.com](mailto:TerriAnne.Benedetto@KlineSpecter.com)]

Sent: Wednesday, July 16, 2003 5:44 PM  
To: 'jfernandez@zuckerman.com'  
Cc: Haviland, Donald E.  
Subject: Motion To Quash

Attached please find the draft of the Motion To Quash which we have prepared. Please call either Don or me if you have any questions or need anything else. Please note that the draft Motion references 2 exhibits which need to be attached.

Thank you,  
TerriAnne Benedetto

<<Motion to Quash Deposition Notices for Doctors' Counsel - HOPKINS.wpd>>

TerriAnne Benedetto, Esquire  
Kline & Specter, P.C.  
1525 Locust Street, 19th Floor  
Philadelphia, PA 19102  
215-772-1000 telephone  
215-735-0957 facsimile

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**EXHIBIT F**

Delesie, Clare M.

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**From:** Fernandez, Jack  
**Sent:** Thursday, July 24, 2003 8:33 AM  
**To:** Merritt, Clare M.  
**Subject:** FW: Court documents



Affidavit of Service Fernandez Limited Joinder of Antoun  
Doctor Fe... Entry of App... In Plaintiff... Hold on to these.

-----Original Message-----

From: Haviland, Donald E. [mailto:Donald.Haviland@KlineSpecter.com]  
Sent: Thursday, July 17, 2003 2:56 PM  
To: Jack Fernandez (E-mail)  
Subject: Court documents

Jack,

Per our discussions, I am forwarding to you two documents for your review, approval and filing.

1. a Limited Entry of Appearance;
2. an Affidavit of Service.

I am also sending a third document that Mike Mustokoff is filing -- a Joinder in our Remand Motion. Based on your prior e-mail, let me know if that is something you would be willing to file as well.

I think these documents been to be FedExed to the NJ Court for filing tomorrow to ensure they are received by Monday's hearing.

Thx

Don

<<Affidavit of Service Doctor Fernandez.wpd>> <<Fernandez Limited Entry of Appearance.wpd>> <<Joinder of Antoun in Plaintiff's Motion for Remand.wpd>>

---

Donald E. Haviland, Jr., Esquire  
Kline & Specter, P.C.  
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Philadelphia, PA 19102-3712  
215\*772\*1000 telephone  
215\*735\*0957 facsimile

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**EXHIBIT G**

Cases

Page 1 of 1

**Delesie, Clare M.**

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**From:** Haviland, Donald E. [Donald.Haviland@KlineSpecter.com]  
**Sent:** Wednesday, November 02, 2005 1:36 PM  
**To:** Fernandez, Jack  
**Subject:** Cases

Here are the cases re the discoverability of settlement negotiations about which we spoke  
<<EDPA case.wpd>> <<Lupron.wpd>>

---

Donald E. Haviland, Jr., Esquire  
**Kline & Specter, P.C.**  
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MTQ-000488

1/18/2006